



Patent
Attorney Docket No. 1033025-000006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Hidehiro Yamazaki

Application No.: 10/665,373

Filing Date: September 22, 2003

Title: PROCESS FOR CONTROLLING WATER AND ELECTROLYTE BALANCE AND ACID-BASE

Group Art Unit: 3761

Examiner: John D Pak

Confirmation No.: 5015

AMENDMENT/REPLY TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is a reply for the above-identified patent application.

A Petition for Extension of Time is also enclosed.
 Terminal Disclaimer(s) and the \$65.00 (2814) \$130.00 (1814) fee per Disclaimer due under 37 C.F.R. § 1.20(d) are also enclosed.
 Also enclosed is/are _____

Small entity status is hereby claimed.
 Applicant(s) requests continued examination under 37 C.F.R. § 1.114 and enclose the \$395.00 (2801) \$790.00 (1801) fee due under 37 C.F.R. § 1.17(e).
 Applicant(s) requests that any previously unentered after final amendments not be entered. Continued examination is requested based on the enclosed documents identified above.
 Applicant(s) previously submitted _____

on _____, for which continued examination is requested.

Applicant(s) requests suspension of action by the Office until at least _____, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.
 A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

No additional claim fee is required.
 An additional claim fee is required, and is calculated as shown below.

AMENDED CLAIMS					
	No. of Claims	Highest No. of Claims Previously Paid For	Extra Claims	Rate	Additional Fee
Total Claims	15	MINUS 20 =	0	x \$50.00 (1202) =	\$ 0.00
Independent Claims	2	MINUS 3 =	0	x \$200.00 (1201) =	\$ 0.00
If Amendment adds multiple dependent claims, add \$360.00 (1203)					
Total Claim Amendment Fee					
<input type="checkbox"/> Small Entity Status claimed - subtract 50% of Total Claim Amendment Fee					
TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT					

A check in the amount of _____ is enclosed for the fee due.
 Charge _____ to Deposit Account No. 02-4800.
 Charge _____ to credit card. Form PTO-2038 is attached.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

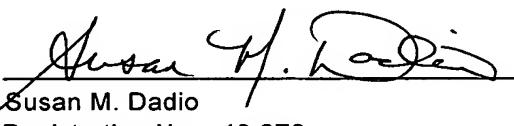
Respectfully submitted,

BUCHANAN INGERSOLL PC

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

Date: February 27, 2006

By


Susan M. Dadio
Registration No. 40,373



Patent
Attorney's Docket No. 1033025-000006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
)
Hidehiro YAMAZAKI) Group Art Unit: 1616
Application No.: 10/665,373) Examiner: John D. Pak
Filed: September 22, 2003) Confirmation No.: 5015
For: PROCESS FOR CONTROLLING)
WATER AND ELECTROLYTE)
BALANCE AND ACID-BASE)
EQUILIBRIUM IN HUMAN BODY)

REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In complete response to the Office Communication mailed on January 26, 2006 whereby the Examiner has required restriction amongst the claims, applicant hereby elects, with traverse, Group VI – claim 9 – which as stated in the Office Communication is "drawn to a method for controlling water and electrolyte balance and acid-base equilibrium of a patient under operation or post-operative patient."

OFFICE COMMUNICATION at 2-3.

According to section 803 of the M.P.E.P., a restriction between patentably distinct inventions is proper only where there is a serious burden on the examiner to examine all the claims in a single application. This is true even when appropriate reasons exist for a restriction requirement. While applicant does not concede that proper reasons exist for a restriction requirement (*i.e.*, whether two or more independent and distinct inventions are claimed), there is no serious burden on the Examiner to examine all of the claims in the present application particularly since the

searches are co-extensive. Accordingly, the restriction requirement is in error and should be withdrawn.

The merits of the Examiner's unsupported statement regarding the "nonallowance of the linking claims, claims 1-3" will be addressed as such later time when the Examiner actually sets forth the basis and reasoning behind such assertions.

Moreover, the Examiner's attention is directed to the fact that applicants filed a Preliminary Amendment when the application was filed on September 22, 2003. This Preliminary Amendment does not appear to have been taken into account when the Examiner issued the Office Communication requiring restriction. This is evident by the fact that the Preliminary Amendment added new claim 15 which was not included in the Office Action Summary nor the restriction requirement itself. Based solely on the structure of the Examiner's restriction requirement, it would appear that claim 15 would be considered a linking claim.¹ If, however, the Examiner considers claim 15 (or any of the other claims which were amended via the Preliminary Amendment) to be grouped differently, then the Examiner must withdraw the current restriction requirement and, if applicable, re-issue the restriction requirement so as to permit applicant a fair and full opportunity to evaluate the new requirement and make a new election.

Applicant reserves the right to file one or more divisional applications directed to any of the non-elected subject matter

In the event that there are any questions relating to this Reply to Restriction Requirement, or the application in general, it would be appreciated if the Examiner

¹ This statement should in no way be construed as any type of admission with respect to the allowability of claim 15.

would contact the undersigned attorney at concerning such questions so that
prosecute of this application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Including attorneys from Burns, Doane,
Swecker & Mathis

Date: February 27, 2006

By: Susan M. Dadio
Susan M. Dadio
Registration No. 40,373

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